

AMENDED IN SENATE AUGUST 5, 2002

AMENDED IN SENATE JUNE 25, 2002

AMENDED IN ASSEMBLY MARCH 7, 2002

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 1838

Introduced by Assembly Member Hertzberg
(Principal coauthor: Assembly Member Cogdill)

**(Coauthors: Assembly Members Alquist, Bates, Bill Campbell,
Chavez, Cogdill, Diaz, Harman, Longville, Matthews, Nakano,
Robert Pacheco, and Salinas)**

(Coauthor: Senator Scott)

January 24, 2002

An act to amend Sections 189, 667.5, 1192.7, 11417, ~~11418, 11418.5,~~
~~and 11419~~ *and 11418* of, and to add Section 11418.1 to, the Penal Code,
relating to weapons of mass destruction, and declaring the urgency
thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 1838, as amended, Hertzberg. Weapons of mass destruction.

Existing law, as amended by initiative statute, specifies those acts that constitute first degree murder. The initiative statute provides that any amendment of its provisions by the Legislature shall require a ²/₃ vote of the membership of each house.

This bill would add to those acts, murder perpetrated by means of a weapon of mass destruction.

By expanding the scope of an existing crime, this bill would impose a state-mandated local program.

Existing law provides for a list of crimes called “serious felonies” and “violent felonies.” Existing law provides specified enhancements to the punishments of certain repeat, state prison bound offenders with prior violent or serious felony convictions. Existing law provides for the possibility of a reduction of time served on a sentence for work performance, but limits the sentence reduction available to 15%, rather than the usual 50% for prison, or 33% for county jail, if a defendant is committed on charges that include one or more violent or serious felonies. Proposition 21, in initiative statute, provides that any amendment of these provisions by the Legislature shall require a $\frac{2}{3}$ vote of the membership of each house.

This bill would add to the list of violent felonies specified offenses perpetrated by means of a weapon of mass destruction, as specified.

This bill would also add to the list of serious felonies specified violations perpetrated with weapons of mass destruction, as defined, and any conspiracy to commit any serious felony.

Existing law defines “weapon of mass destruction.” Existing law also provides that, absent lawful authority, the possession, development, manufacture, production, transfer, acquisition, or retention of any weapon of mass destruction is a felony.

This bill would expand that definition to include restricted biological agents, and an aircraft, vessel, or vehicle that is used as a destructive weapon. This bill would also define “used as a destructive weapon” for purposes of those provisions.

By expanding the scope of an existing crime, this bill would impose a state-mandated local program.

Existing law provides that, absent lawful authority, the possession, development, manufacture, production, transfer, acquisition, or retention of any weapon of mass destruction is a felony.

This bill would, in addition, provide that a person who employs, as specified, a weapon of mass destruction in a form that may cause widespread great bodily injury or death and causes the death of any human being would be punishable by imprisonment in the state prison for life without the possibility of parole.

By creating a new crime, this bill would impose a state-mandated local program.

This bill would increase the penalty for related crimes.

Existing law provides that a threat, as specified, to use a weapon of mass destruction is a crime.



This bill would, in addition, provide that giving, mailing, sending, or causing to be sent a false or facsimile weapon of mass destruction, as specified, would be a misdemeanor. It would further provide that if the prohibited conduct causes another person to be placed in sustained fear, as defined, the conduct would be punishable by imprisonment in a county jail not exceeding one year, or imprisonment in the state prison for 16 months or 2 or 3 years and a fine not exceeding \$250,000.

By creating a new crime, this bill would impose a state-mandated local program.

~~Existing law provides that a threat, as specified, to use a weapon of mass destruction, that results in “sustained fear,” as defined, is a crime.~~

~~This bill would, in addition, expand the definition evidence showing “sustained fear” to include any isolation, quarantine, or decontamination effort. By expanding the scope of an existing crime, this bill would impose a state-mandated local program.~~

~~Existing law provides that possession of a restricted biological agent, as defined, is punishable by imprisonment in the state prison for 4, 8, or 12 years, or a fine not exceeding \$250,000, or by both imprisonment and the fine.~~

~~This bill would revise the penalties to provide that the offense would be punishable by both the prison term and the fine. The bill would also expand the list of restricted biological agents to include tabtoxin, along with bioengineered and naturally occurring products and components, as specified.~~

~~By expanding the scope of an existing crime, this bill would impose a state-mandated local program.~~

The bill would make related changes.

Because this bill would amend initiative statutes, it would require a $\frac{2}{3}$ vote of the membership of each house of the Legislature for enactment by the Legislature under the terms of the initiative statutes.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 189 of the Penal Code is amended to read:

189. All murder which is perpetrated by means of a destructive device or explosive, a weapon of mass destruction, knowing use of ammunition designed primarily to penetrate metal or armor, poison, lying in wait, torture, or by any other kind of willful, deliberate, and premeditated killing, or which is committed in the perpetration of, or attempt to perpetrate, arson, rape, carjacking, robbery, burglary, mayhem, kidnapping, train wrecking, or any act punishable under Section 206, 286, 288, 288a, or 289, or any murder which is perpetrated by means of discharging a firearm from a motor vehicle, intentionally at another person outside of the vehicle with the intent to inflict death, is murder of the first degree. All other kinds of murders are of the second degree.

As used in this section, “destructive device” means any destructive device as defined in Section 12301, and “explosive” means any explosive as defined in Section 12000 of the Health and Safety Code.

As used in this section, “weapon of mass destruction” means any item defined in Section 11417.

To prove the killing was “deliberate and premeditated,” it shall not be necessary to prove the defendant maturely and meaningfully reflected upon the gravity of his or her act.

SEC. 2. Section 667.5 of the Penal Code is amended to read:

667.5. Enhancement of prison terms for new offenses because of prior prison terms shall be imposed as follows:

(a) Where one of the new offenses is one of the violent felonies specified in subdivision (c), in addition to and consecutive to any other prison terms therefor, the court shall impose a three-year term for each prior separate prison term served by the defendant where the prior offense was one of the violent felonies specified in subdivision (c). However, no additional term shall be imposed under this subdivision for any prison term served prior to a period of 10 years in which the defendant remained free of both prison custody and the commission of an offense which results in a felony conviction.

(b) Except where subdivision (a) applies, where the new offense is any felony for which a prison sentence is imposed, in addition and consecutive to any other prison terms therefor, the court shall impose a one-year term for each prior separate prison term served for any felony; provided that no additional term shall be imposed under this subdivision for any prison term served prior to a period of five years in which the defendant remained free of both prison custody and the commission of an offense which results in a felony conviction.

(c) For the purpose of this section, “violent felony” shall mean any of the following:

(1) Murder or voluntary manslaughter.

(2) Mayhem.

(3) Rape as defined in paragraph (2) or (6) of subdivision (a) of Section 261 or paragraph (1) or (4) of subdivision (a) of Section 262.

(4) Sodomy by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.

(5) Oral copulation by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.

(6) Lewd acts on a child under the age of 14 years as defined in Section 288.

(7) Any felony punishable by death or imprisonment in the state prison for life.

(8) Any felony in which the defendant inflicts great bodily injury on any person other than an accomplice which has been charged and proved as provided for in Section 12022.7 or 12022.9 on or after July 1, 1977, or as specified prior to July 1, 1977, in Sections 213, 264, and 461, or any felony in which the defendant uses a firearm which use has been charged and proved as provided in Section 12022.5, or 12022.55.

(9) Any robbery.

(10) Arson, in violation of subdivision (a) or (b) of Section 451.

(11) The offense defined in subdivision (a) of Section 289 where the act is accomplished against the victim’s will by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.

(12) Attempted murder.

1 (13) A violation of Section 12308, 12309, or 12310.

2 (14) Kidnapping.

3 (15) Assault with the intent to commit mayhem, rape, sodomy,
4 or oral copulation, in violation of Section 220.

5 (16) Continuous sexual abuse of a child, in violation of Section
6 288.5.

7 (17) Carjacking, as defined in subdivision (a) of Section 215.

8 (18) A violation of Section 264.1.

9 (19) Extortion, as defined in Section 518, which would
10 constitute a felony violation of Section 186.22 of the Penal Code.

11 (20) Threats to victims or witnesses, as defined in Section
12 136.1, which would constitute a felony violation of Section 186.22
13 of the Penal Code.

14 (21) Any burglary of the first degree, as defined in subdivision
15 (a) of Section 460, wherein it is charged and proved that another
16 person, other than an accomplice, was present in the residence
17 during the commission of the burglary.

18 (22) Any violation of Section 12022.53.

19 (23) A violation of subdivision (b) or (c) of Section 11418.

20 The Legislature finds and declares that these specified crimes
21 merit special consideration when imposing a sentence to display
22 society's condemnation for these extraordinary crimes of violence
23 against the person.

24 (d) For the purposes of this section, the defendant shall be
25 deemed to remain in prison custody for an offense until the official
26 discharge from custody or until release on parole, whichever first
27 occurs, including any time during which the defendant remains
28 subject to reimprisonment for escape from custody or is
29 reimprisoned on revocation of parole. The additional penalties
30 provided for prior prison terms shall not be imposed unless they
31 are charged and admitted or found true in the action for the new
32 offense.

33 (e) The additional penalties provided for prior prison terms
34 shall not be imposed for any felony for which the defendant did not
35 serve a prior separate term in state prison.

36 (f) A prior conviction of a felony shall include a conviction in
37 another jurisdiction for an offense which, if committed in
38 California, is punishable by imprisonment in the state prison if the
39 defendant served one year or more in prison for the offense in the
40 other jurisdiction. A prior conviction of a particular felony shall

1 include a conviction in another jurisdiction for an offense which
2 includes all of the elements of the particular felony as defined
3 under California law if the defendant served one year or more in
4 prison for the offense in the other jurisdiction.

5 (g) A prior separate prison term for the purposes of this section
6 shall mean a continuous completed period of prison incarceration
7 imposed for the particular offense alone or in combination with
8 concurrent or consecutive sentences for other crimes, including
9 any reimprisonment on revocation of parole which is not
10 accompanied by a new commitment to prison, and including any
11 reimprisonment after an escape from incarceration.

12 (h) Serving a prison term includes any confinement time in any
13 state prison or federal penal institution as punishment for
14 commission of an offense, including confinement in a hospital or
15 other institution or facility credited as service of prison time in the
16 jurisdiction of the confinement.

17 (i) For the purposes of this section, a commitment to the State
18 Department of Mental Health as a mentally disordered sex
19 offender following a conviction of a felony, which commitment
20 exceeds one year in duration, shall be deemed a prior prison term.

21 (j) For the purposes of this section, when a person subject to the
22 custody, control, and discipline of the Director of Corrections is
23 incarcerated at a facility operated by the Department of the Youth
24 Authority, that incarceration shall be deemed to be a term served
25 in state prison.

26 (k) Notwithstanding subdivisions (d) and (g) or any other
27 provision of law, where one of the new offenses is committed
28 while the defendant is temporarily removed from prison pursuant
29 to Section 2690 or while the defendant is transferred to a
30 community facility pursuant to Section 3416, 6253, or 6263, or
31 while the defendant is on furlough pursuant to Section 6254, the
32 defendant shall be subject to the full enhancements provided for
33 in this section.

34 This subdivision shall not apply when a full, separate, and
35 consecutive term is imposed pursuant to any other provision of
36 law.

37 SEC. 3. Section 1192.7 of the Penal Code is amended to read:

38 1192.7. (a) Plea bargaining in any case in which the
39 indictment or information charges any serious felony, any felony
40 in which it is alleged that a firearm was personally used by the

1 defendant, or any offense of driving while under the influence of
2 alcohol, drugs, narcotics, or any other intoxicating substance, or
3 any combination thereof, is prohibited, unless there is insufficient
4 evidence to prove the people's case, or testimony of a material
5 witness cannot be obtained, or a reduction or dismissal would not
6 result in a substantial change in sentence.

7 (b) As used in this section "plea bargaining" means any
8 bargaining, negotiation, or discussion between a criminal
9 defendant, or his or her counsel, and a prosecuting attorney or
10 judge, whereby the defendant agrees to plead guilty or nolo
11 contendere, in exchange for any promises, commitments,
12 concessions, assurances, or consideration by the prosecuting
13 attorney or judge relating to any charge against the defendant or
14 to the sentencing of the defendant.

15 (c) As used in this section, "serious felony" means any of the
16 following:

17 (1) Murder or voluntary manslaughter; (2) mayhem; (3) rape;
18 (4) sodomy by force, violence, duress, menace, threat of great
19 bodily injury, or fear of immediate and unlawful bodily injury on
20 the victim or another person; (5) oral copulation by force,
21 violence, duress, menace, threat of great bodily injury, or fear of
22 immediate and unlawful bodily injury on the victim or another
23 person; (6) lewd or lascivious act on a child under the age of 14
24 years; (7) any felony punishable by death or imprisonment in the
25 state prison for life; (8) any felony in which the defendant
26 personally inflicts great bodily injury on any person, other than an
27 accomplice, or any felony in which the defendant personally uses
28 a firearm; (9) attempted murder; (10) assault with intent to commit
29 rape or robbery; (11) assault with a deadly weapon or instrument
30 on a peace officer; (12) assault by a life prisoner on a noninmate;
31 (13) assault with a deadly weapon by an inmate; (14) arson; (15)
32 exploding a destructive device or any explosive with intent to
33 injure; (16) exploding a destructive device or any explosive
34 causing bodily injury, great bodily injury, or mayhem; (17)
35 exploding a destructive device or any explosive with intent to
36 murder; (18) any burglary of the first degree; (19) robbery or bank
37 robbery; (20) kidnapping; (21) holding of a hostage by a person
38 confined in a state prison; (22) attempt to commit a felony
39 punishable by death or imprisonment in the state prison for life;
40 (23) any felony in which the defendant personally used a

1 dangerous or deadly weapon; (24) selling, furnishing,
2 administering, giving, or offering to sell, furnish, administer, or
3 give to a minor any heroin, cocaine, phencyclidine (PCP), or any
4 methamphetamine-related drug, as described in paragraph (2) of
5 subdivision (d) of Section 11055 of the Health and Safety Code,
6 or any of the precursors of methamphetamines, as described in
7 subparagraph (A) of paragraph (1) of subdivision (f) of Section
8 11055 or subdivision (a) of Section 11100 of the Health and Safety
9 Code; (25) any violation of subdivision (a) of Section 289 where
10 the act is accomplished against the victim's will by force, violence,
11 duress, menace, or fear of immediate and unlawful bodily injury
12 on the victim or another person; (26) grand theft involving a
13 firearm; (27) carjacking; (28) any felony offense, which would
14 also constitute a felony violation of Section 186.22; (29) assault
15 with the intent to commit mayhem, rape, sodomy, or oral
16 copulation, in violation of Section 220; (30) throwing acid or
17 flammable substances, in violation of Section 244; (31) assault
18 with a deadly weapon, firearm, machinegun, assault weapon, or
19 semiautomatic firearm or assault on a peace officer or firefighter,
20 in violation of Section 245; (32) assault with a deadly weapon
21 against a public transit employee, custodial officer, or school
22 employee, in violation of Sections 245.2, 245.3, or 245.5; (33)
23 discharge of a firearm at an inhabited dwelling, vehicle, or aircraft,
24 in violation of Section 246; (34) commission of rape or sexual
25 penetration in concert with another person, in violation of Section
26 264.1; (35) continuous sexual abuse of a child, in violation of
27 Section 288.5; (36) shooting from a vehicle, in violation of
28 subdivision (c) or (d) of Section 12034; (37) intimidation of
29 victims or witnesses, in violation of Section 136.1; (38) criminal
30 threats, in violation of Section 422; (39) any attempt to commit a
31 crime listed in this subdivision other than an assault; (40) any
32 violation of Section 12022.53; (41) a violation of subdivision (b)
33 or (c) of Section 11418; and (42) any conspiracy to commit an
34 offense described in this subdivision.

35 (d) As used in this section, "bank robbery" means to take or
36 attempt to take, by force or violence, or by intimidation from the
37 person or presence of another any property or money or any other
38 thing of value belonging to, or in the care, custody, control,
39 management, or possession of, any bank, credit union, or any
40 savings and loan association.



1 As used in this subdivision, the following terms have the
2 following meanings:

3 (1) “Bank” means any member of the Federal Reserve System,
4 and any bank, banking association, trust company, savings bank,
5 or other banking institution organized or operating under the laws
6 of the United States, and any bank the deposits of which are
7 insured by the Federal Deposit Insurance Corporation.

8 (2) “Savings and loan association” means any federal savings
9 and loan association and any “insured institution” as defined in
10 Section 401 of the National Housing Act, as amended, and any
11 federal credit union as defined in Section 2 of the Federal Credit
12 Union Act.

13 (3) “Credit union” means any federal credit union and any
14 state-chartered credit union the accounts of which are insured by
15 the Administrator of the National Credit Union administration.

16 (e) The provisions of this section shall not be amended by the
17 Legislature except by statute passed in each house by rollcall vote
18 entered in the journal, two-thirds of the membership concurring,
19 or by a statute that becomes effective only when approved by the
20 electors.

21 SEC. 4. Section 11417 of the Penal Code is amended to read:

22 11417. (a) For the purposes of this article, the following
23 terms have the following meanings:

24 (1) “Weapon of mass destruction” includes chemical warfare
25 agents, weaponized biological or biologic warfare agents,
26 restricted biological agents, nuclear agents, radiological agents, or
27 the intentional release of industrial agents as a weapon, or an
28 aircraft, vessel, or vehicle, as described in Section 34500 of the
29 Vehicle Code, which is used as a destructive weapon.

30 (2) “Chemical Warfare Agents” includes, but is not limited to,
31 the following weaponized agents, or any analog of these agents:

32 (A) Nerve agents, including Tabun (GA), Sarin (GB), Soman
33 (GD), GF, and VX.

34 (B) Choking agents, including Phosgene (CG) and Diphosgene
35 (DP).

36 (C) Blood agents, including Hydrogen Cyanide (AC),
37 Cyanogen Chloride (CK), and Arsine (SA).

38 (D) Blister agents, including mustards (H, HD [sulfur
39 mustard], HN-1, HN-2, HN-3 [nitrogen mustard]), arsenicals,



such as Lewisite (L), urticants, such as CX; and incapacitating agents, such as BZ.

(3) “Weaponized biological or biologic warfare agents” include weaponized pathogens, such as bacteria, viruses, rickettsia, yeasts, fungi, or genetically engineered pathogens, toxins, vectors, and endogenous biological regulators (EBRs).

(4) “Nuclear or radiological agents” includes any improvised nuclear device (IND) which is any explosive device designed to cause a nuclear yield; any radiological dispersal device (RDD) which is any explosive device utilized to spread radioactive material; or a simple radiological dispersal device (SRDD) which is any act or container designed to release radiological material as a weapon without an explosion.

(5) “Vector” means a living organism or a molecule, including a recombinant molecule, or a biological product that may be engineered as a result of biotechnology, that is capable of carrying a biological agent or toxin to a host.

(6) “Weaponization” is the deliberate processing, preparation, packaging, or synthesis of any substance for use as a weapon or munition. “Weaponized agents” are those agents or substances prepared for dissemination through any explosive, thermal, pneumatic, or mechanical means.

(7) For purposes of this section, “used as a destructive weapon” means to use with the intent of causing widespread great bodily injury or death by causing a fire or explosion or the release of a chemical, biological, or radioactive agent.

(b) The intentional release of a dangerous chemical or hazardous material generally utilized in an industrial or commercial process shall be considered use of a weapon of mass destruction when a person knowingly utilizes those agents with the intent to cause harm and the use places persons or animals at risk of serious injury, illness, or death, or endangers the environment.

(c) The lawful use of chemicals for legitimate mineral extraction, industrial, agricultural, or commercial purposes is not proscribed by this article.

(d) No university, research institution, private company, individual, or hospital engaged in scientific or public health research and, as required, registered with the Centers for Disease Control and Prevention (CDC) pursuant to Part 113 (commencing with Section 113.1) of Subchapter E of Chapter 1 of Title 9 or

1 pursuant to Part 72 (commencing with Section 72.1) of Subchapter
2 E of Chapter 1 of Title 42 of the Code of Federal Regulations, or
3 any successor provisions, shall be subject to this article.

4 SEC. 5. Section 11418 of the Penal Code is amended to read:

5 11418. (a) (1) Any person, without lawful authority, who
6 possesses, develops, manufactures, produces, transfers, acquires,
7 or retains any weapon of mass destruction, shall be punished by
8 imprisonment in the state prison for 4, 8, or 12 years.

9 (2) Any person who commits a violation of paragraph (1) and
10 who has been previously convicted of Section 11411, 11412,
11 11413, 11418, 11418.1, 11418.5, 11419, 11460, 12303.1,
12 12303.2, or 12303.3 shall be punished by imprisonment in the state
13 prison for 5, 10, or 15 years.

14 (b) (1) Any person who uses or directly employs against
15 another person a weapon of mass destruction in a form that may
16 cause widespread, disabling illness or injury in human beings shall
17 be punished by imprisonment in the state prison for life.

18 (2) Any person who uses or directly employs against another
19 person a weapon of mass destruction in a form that may cause
20 widespread great bodily injury or death and causes the death of any
21 human being shall be punished by imprisonment in the state prison
22 for life without the possibility of parole. Nothing in this paragraph
23 shall prevent punishment instead under Section 190.2.

24 (3) Any person who uses a weapon of mass destruction in a
25 form that may cause widespread damage to or disruption of the
26 food supply or “source of drinking water” as defined in
27 subdivision (d) of Section 25249.11 of the Health and Safety Code
28 shall be punished by imprisonment in the state prison for 5, 8, or
29 12 years and by a fine of not more than one hundred thousand
30 dollars (\$100,000).

31 (4) Any person who maliciously uses against animals, crops, or
32 seed and seed stock, a weapon of mass destruction in a form that
33 may cause widespread damage to or substantial diminution in the
34 value of stock animals or crops, including seeds used for crops or
35 product of the crops, shall be punished by imprisonment in the
36 state prison for 4, 8, or 12 years and by a fine of not more than one
37 hundred thousand dollars (\$100,000).

38 (c) Any person who uses a weapon of mass destruction in a
39 form that may cause widespread and significant damage to public
40 natural resources, including coastal waterways and beaches,

public parkland, surface waters, ground water, and wildlife, shall be punished by imprisonment in the state prison for 3, 4, or 6 years.

(d) (1) Any person who uses recombinant technology or any other biological advance to create new pathogens or more virulent forms of existing pathogens for use in any crime described in subdivision (b) shall be punished by imprisonment in the state prison for 4, 8, or 12 years and by a fine of not more than two hundred fifty thousand dollars (\$250,000).

(2) Any person who uses recombinant technology or any other biological advance to create new pathogens or more virulent forms of existing pathogens for use in any crime described in subdivision (c) shall be punished by imprisonment in the state prison for three, six, or nine years and by a fine of not more than two hundred fifty thousand dollars (\$250,000).

(e) Nothing in this section shall be construed to prevent punishment instead pursuant to any other provision of law that imposes a greater or more severe punishment.

SEC. 6. Section 11418.1 is added to the Penal Code, to read:

11418.1. Any person who gives, mails, sends, or causes to be sent any false or facsimile of a weapon of mass destruction to another person, or places, causes to be placed, or possesses any false or facsimile of a weapon of mass destruction, with the intent to cause another person to fear for his or her own safety, or for the personal safety of others, is guilty of a misdemeanor. If the person's conduct causes another person to be placed in sustained fear, the person shall be punished by imprisonment in a county jail for not more than one year or in the state prison for 16 months, or two or three years and by a fine of not more than two hundred fifty thousand dollars (\$250,000). For purposes of this section, "sustained fear" has the same meaning as in Section 11418.5.

~~SEC. 7. Section 11418.5 of the Penal Code is amended to read:~~

~~11418.5. (a) Any person who knowingly threatens to use a weapon of mass destruction, with the specific intent that the statement as defined in Section 225 of the Evidence Code or a statement made by means of an electronic communication device, is to be taken as a threat, even if there is no intent of actually carrying it out, which, on its face and under the circumstances in which it is made, is so unequivocal, immediate, and specific as to convey to the person threatened, a gravity of purpose and an~~

1 immediate prospect of execution of the threat, and thereby causes
2 that person reasonably to be in sustained fear for his or her own
3 safety, or for his or her immediate family's safety shall be punished
4 by imprisonment in a county jail for up to one year or in the state
5 prison for 3, 4, or 6 years, and by a fine of not more than two
6 hundred fifty thousand dollars (\$250,000).

7 (b) For the purposes of this section, "sustained fear" can be
8 established by, but is not limited to, conduct such as evacuation of
9 any building by any occupant, evacuation of any school by any
10 employee or student, evacuation of any home by any resident or
11 occupant, any isolation, quarantine, or decontamination effort.

12 (c) The fact that the person who allegedly violated this section
13 did not actually possess a biological agent, toxin, or chemical
14 weapon does not constitute a defense to the crime specified in this
15 section.

16 (d) Nothing in this section shall be construed to prevent
17 punishment instead pursuant to any other provision of law that
18 imposes a greater or more severe punishment.

19 SEC. 8.— Section 11419 of the Penal Code is amended to read:

20 11419. (a) Any person or entity possessing any of the
21 restricted biological agents enumerated in subdivision (b) shall be
22 punished by imprisonment in the state prison for 4, 8, or 12 years,
23 and a fine of not more than two hundred fifty thousand dollars
24 (\$250,000).

25 (b) For the purposes of this section, "restricted biological
26 agents" means the following:

27 (1) Viruses: Crimean-Congo hemorrhagic fever virus, eastern
28 equine encephalitis virus, ebola viruses, equine morbilli virus,
29 lassa fever virus, marburg virus, Rift Valley fever virus, South
30 African hemorrhagic fever viruses (Junin, Machupo, Sabia,
31 Flexal, Guanarito), tick-borne encephalitis complex viruses,
32 variola major virus (smallpox virus), Venezuelan equine
33 encephalitis virus, viruses causing hantavirus pulmonary
34 syndrome, yellow fever virus.

35 (2) Bacteria: bacillus anthracis (commonly known as anthrax),
36 brucella abortus, brucella melitensis, brucella suis, burkholderia
37 (pseudomonas) mallei, burkholderia (pseudomonas)
38 pseudomallei, clostridium botulinum, francisella tularensis,
39 yersinia pestis (commonly known as plague).

1 ~~(3) Rickettsiae: coxiella burnetii, rickettsia prowazekii,~~
2 ~~rickettsia rickettsii.~~

3 ~~(4) Fungi: coccidioides immitis.~~

4 ~~(5) Toxins: abrin, aflatoxins, botulinum toxins, clostridium~~
5 ~~perfringens epsilon toxin, conotoxins, diaacetoxyscirpenol, ricin,~~
6 ~~saxitoxin, shigatoxin, staphylococcal enterotoxins, tetrodotoxin,~~
7 ~~T-2 toxin, tabtoxin.~~

8 ~~(6) Any other microorganism, virus, infectious substance, or~~
9 ~~biological product that has the same characteristics as, or is~~
10 ~~substantially similar to, the substances prohibited in this section.~~

11 ~~(e) (1) This section shall not apply to any physician,~~
12 ~~veterinarian, pharmacist, or licensed medical practitioner~~
13 ~~authorized to dispense a prescription under Section 11026 of the~~
14 ~~Health and Safety Code, or universities, research institutions, or~~
15 ~~pharmaceutical corporations, or any person possessing the agents~~
16 ~~pursuant to a lawful prescription issued by a person defined in~~
17 ~~Section 11026 of the Health and Safety Code, if the person~~
18 ~~possesses vaccine strains of the viral agents Junin virus strain #1,~~
19 ~~Rift Valley fever virus strain MP-12, Venezuelan equine~~
20 ~~encephalitis virus strain TC-83 and yellow fever virus strain 17-D;~~
21 ~~any vaccine strain described in Section 78.1 of Subpart A of Part~~
22 ~~78 of Subchapter C of Chapter 1 of Title 9 of the Code of Federal~~
23 ~~Regulations, or any successor provisions, and any toxin for~~
24 ~~medical use, inactivated for use as vaccines, or toxin preparation~~
25 ~~for biomedical research use at a median lethal dose for vertebrates~~
26 ~~of more than 100 ng/kg, as well as any national standard toxin~~
27 ~~required for biologic potency testing as described in Part 113~~
28 ~~(commencing with Section 113.1) of Subchapter E of Chapter 1 of~~
29 ~~Title 9 of the Code of Federal Regulations, or any successor~~
30 ~~provisions.~~

31 ~~(2) For the purposes of this section, no person shall be deemed~~
32 ~~to be in possession of an agent if the person is naturally exposed~~
33 ~~to, or innocently infected or contaminated with, the agent.~~

34 ~~(d) Any peace officer who encounters any of the restricted~~
35 ~~agents mentioned above shall immediately notify and consult with~~
36 ~~a local public health officer to ensure proper consideration of any~~
37 ~~public health risk.~~

38 ~~(e) Nothing in this section shall be construed to prevent~~
39 ~~punishment instead pursuant to any other provision of law that~~
40 ~~imposes a greater or more severe punishment.~~

1 ~~SEC. 9.~~

2 *SEC. 7.* No reimbursement is required by this act pursuant to
3 Section 6 of Article XIII B of the California Constitution because
4 the only costs that may be incurred by a local agency or school
5 district will be incurred because this act creates a new crime or
6 infraction, eliminates a crime or infraction, or changes the penalty
7 for a crime or infraction, within the meaning of Section 17556 of
8 the Government Code, or changes the definition of a crime within
9 the meaning of Section 6 of Article XIII B of the California
10 Constitution.

11 ~~SEC. 10.~~

12 *SEC. 8.* This act is an urgency statute necessary for the
13 immediate preservation of the public peace, health, or safety
14 within the meaning of Article IV of the Constitution and shall go
15 into immediate effect. The facts constituting the necessity are:

16 In order to provide for immediate authority to effectively
17 address the use or threatened use of weapons of mass destruction
18 in California, it is necessary that this act take effect immediately.

